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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,774	08/25/2006	Ralf Neumann	WK-5391	2467
24956 7590 05/22/2009 MATTINGLY & MALUR, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314				
EXAMINER				
PARSLEY, DAVID J				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
05/22/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,774

Applicant(s)

NEUMANN ET AL.

Examiner

DAVID J. PARSLEY

Art Unit

3643

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-31-09 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the control and/or regulating apparatus described in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent

Application Publication No. 2003/0114097 to Markert et al.

Referring to claim 1, Markert et al. discloses an apparatus for the automated processing of meat, comprising a transport element – at 22, for transporting the meat - see figures 1-2, a cutting element - at 32,34, for cutting and/or trimming the meat - see figures 1-2, a counter surface - at 14,30, for the cutting element and at least one control and/or regulating apparatus - see at 26 or 28 or 48-56 - see figures 1-6, which is in functional connection with the cutting element - see figures 1-6, and a threading element-- at 36, that is mounted forwardly of the counter surface – see figures 1-2, in a transport plane of the meat – see figures 1-2, the threading

element being bent at an angle with respect to the counter surface – see figures 1-2, whereby an outer end of the threading element extends at least partially across the transport plane to at least partially lift one side of the meat prior to the meat reaching the counter surface – see figure 2.

Referring to claim 2, Markert et al. further discloses the threading element is an integral component of the counter surface – see at 14,30,36 in figures 1-2.

Referring to claim 3, Markert et al. further discloses the threading element is constructed as an extension of the counter surface - see at 36 in figures 1-2.

Referring to claim 4, Markert et al. further discloses the threading element is a spatula-like plate element - see at either one of items 36, that has an elongated shape, rounded at free end – see figure 2 where the free end of item 36 is shown as slightly curved/rounded and not as linear/straight when looking at the thickness of item 36.

Referring to claim 5, Markert et al. further discloses the plate element is chamfered at least on a side facing the meat – see the groove through the center of item 36.

Referring to claim 6, Markert et al. further discloses the unit consisting of the counter surface and the threading element is constructed as swivellable - via the wheeled frame - 48-56 as seen in figures 6-8.

Referring to claim 7, Markert et al. further discloses the unit consisting of the counter surface and the threading element is swivellable about at least one rotational axis - via the wheeled frame - 48-56 as seen in figures 6-8.

Referring to claim 8, Markert et al. further discloses the unit consisting of the counter surface and the threading element is movable in a linear direction - via the wheeled frame - 48-56 as seen in figures 6-8.

Referring to claim 9, Markert et al. further discloses a deflector element – at the right edge of 28 and the item 26 shown furthest to the right in figure 2, is arranged on a side of the counter surface opposite the threading element - see figure 2.

Referring to claim 10, Markert et al. further discloses a method for automated processing of meat comprising the steps of transporting the meat – via item 112, into an area of a cutting element – at 132,134 – see figures 9-10, running the meat up against a counter surface – at 114,130, before the meat reaches the cutting element – see figures 9-10, cutting and/or trimming the meat by means of the cutting element - see figures 9-10, removing the meat - see figure 10, wherein the meat is threaded by a threading element - at 136, before running up against the counter surface - see figures 9-10, wherein the meat is at least partially lifted by the threading element from one side thereof and then guided on to the counter surface – see figures 9-10.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Markert et al.

Referring to claim 4, further discloses the threading element is a spatula-like plate element - see at either one of items 36, that has an elongated shape. It appears Markert et al.

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discloses a rounded free end – see figure 2 where the free end of item 36 is shown as slightly curved/rounded and not as linear/straight when looking at the thickness of item 36. However, since drawing figure 2 appears to be a hand sketch it is deemed that the device of Markert et al. would perform equally as well with the free end of item 36 being rounded. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Markert et al. and add the rounded free end, so as to allow for the device to engage the meat without penetrating the meat.

Response to Arguments

5. Applicant's claim amendments in the response dated 3-31-09 obviates the rejections under 35 U.S.C. 112 2nd paragraph set forth in the last office action dated 10-31-08.

Regarding the prior art rejections to claims 1-10, applicant's arguments are with respect to the Basile et al. reference US 6213863 and WIPO reference WO 03/037090 which are not presently being used in prior art rejections as seen in paragraphs 3-4 above in this office action. Therefore applicant's arguments have been considered in view of the newly cited reference to Markert et al. US 2003/0114097 as seen in paragraphs 3-4 above in this office action. Markert et al. is deemed to disclose the newly cited claim limitations of claims 1 and 10 as seen above in paragraphs 3-4 of this office action.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643